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med Noorooddeen,⁽¹⁾ it is very doubtful whether such an execution can be allowed. An officer of the Court is now executing that decree, and collecting the assets of the late firm and paying the debts of the firm, the decree-holders in the latter suit ranking as creditors of that firm. But it is admitted before us that the decree in the suit for dissolution of partnership can be so far regarded as a money-decree, and that therefore it can be attached but cannot be sold. This being so, it is clear that the applicants' remedy is not by a sale of the decree, but by proceeding under the provisions of section 273 of the Civil Procedure Code; see the case of *Gopal v. Joharimal*.⁽²⁾

We therefore vary the order of the Subordinate Judge, and direct that the procedure laid down in section 273 be followed. The order as to sale will be set aside. Each party to bear his own costs in this Court.

Order varied.

(1) (1893) 21 Cal. 85.

(2) (1891) 16 Bom. 522

APPELLATE CIVIL.

*Before the Hon'ble Mr. E. T. Candy, C.S.I., Acting Chief Justice,
 and Mr. Justice Chandavarkar.*

1903.
 June 24.

A SHOP STYLED IN THE NAME OF BAKATRAM NANURAM BY ITS OWNER MINALAL SHADIRAM (ORIGINAL DEFENDANT 1), APPELLANT, v. KHARSETJI JIVAJISHET AND ANOTHER (ORIGINAL PLAINTIFF AND DEFENDANT 2), RESPONDENTS.*

Limitation Act (XV of 1877), schedule II, article 91—Bond—Suit to have the bond adjudged void—Specific Relief Act (I of 1877), section 39—Limitation.

Article 91, schedule II, of the Limitation Act (XV of 1877), applies to a suit brought under section 39 of the Specific Relief Act (I of 1877) to have a bond adjudged void and to have it delivered up and cancelled.

APPEAL from the decision of D. G. Gharpure, First Class Subordinate Judge of Dhulia, in the Khândesh District, in Civil Suit No. 412 of 1898.

* Appeal No. 2 of 1902.

The plaintiff on the 11th November, 1898, brought the present suit to have an instalment bond dated the 19th June, 1894, passed by him to the defendant firm, set aside on the ground that it was obtained from him by coercion, fraud and misrepresentation, alleging that there was no consideration for it and that, if there was any, it was bad as arising out of wagering transactions. The plaintiff further alleged that he came to know of the defendants' fraud in September, 1896.

The defendants were the proprietors of the defendant firm.

Defendant 1 denied the plaintiff's allegations and contended that the suit was time-barred.

Defendant 2 did not appear.

The Subordinate Judge found that though the fraud, if any, must have come to plaintiff's notice sometime before the 9th November, 1895, the claim was not time-barred on the following ground:—

I am of opinion that the cause of action to set aside a bond cannot be time-barred as long as liability thereunder can be enforced. In any suit of the latter description against plaintiff, he can very well make the defence that the bond is invalid and such a defence will not be open to the objection that a suit for setting the bond aside on that ground is time-barred. It is admitted that liability of plaintiff under the bond can still be enforced wherein he can safely plead that the bond is void. If so, his present suit for a similar declaration cannot be time-barred.

The Subordinate Judge, therefore, set aside the bond holding that as it was in respect of *batla* (wagering) transactions, it was illegal and the consideration therefor was not valid.

Defendant 1 appealed.

Branson (with *Narayan V. Gokhale*) for the appellant (defendant 1):—The Judge was wrong in holding that because the plaintiff's plea as to the invalidity of the bond would not be open to the bar of limitation in a suit brought against him by us to enforce liability under the bond, therefore we cannot defend the present suit on the ground of limitation under article 91, schedule II, of the Limitation Act. The suit was brought under section 39 of the Specific Relief Act, and article 91 of the Limitation Act governs such a suit. On the facts found, the suit ought to have been dismissed by the Judge.

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Raike (with *Daji A. Khare*) for respondent 1 (plaintiff) :—We contend that article 91 of the Limitation Act does not apply. The suit is governed by article 120 of the Act, therefore the period of limitation is six years and not three. We seek for a declaration that the bond in suit is void, therefore it should be cancelled and delivered back to us. If article 91 be held applicable, still our prayer for a declaration would not be affected. If the larger relief cannot be granted, we submit we are entitled at least to the smaller relief : *Rallia Ram v. Sundar* ⁽¹⁾; *Nagathal v. Ponnusami* ⁽²⁾.

Branson, in reply :—Where the cancelment or setting aside of an instrument is the only relief asked, article 91 of the Limitation Act applies : *Hazari Lal v. Jadaun Singh* ⁽³⁾; *Uma Shankar v. Kalka Prasad* ⁽⁴⁾; *Hasan Ali v. Nazo*. ⁽⁵⁾ Under section 42 of the Specific Relief Act there can be no suit for a mere declaration that an instrument is void : see Mitter on Limitation, page 730. The plaintiff is, therefore, not entitled to a declaration if his present suit under section 39 of the Specific Relief Act is time-barred.

CANDY, C. J. (ACTING) :—In this case we need only deal with the question of limitation. The Subordinate Judge held that there was no bar of limitation because if the plaintiff had been sued on the bond, he could raise the pleas which are the foundation of his present suit. There are no authorities for such a proposition, and the learned counsel for the plaintiff before us did not support it. But he contended that though the main prayer of the plaint (that the bond should be set aside) might be barred, still he was entitled to a declaration that the bond was void, and that for such a claim the period of limitation would be six years.

We do not think that this contention is sound. The plaintiff seeks equitable relief under section 39 of the Specific Relief Act, and asks to have the bond adjudged void, and prays that the Court may in its discretion so adjudge it, and order it to be

(1) (1833) 18 Punjab Record, 264.

(3) (1882) 5 All. 76.

(2) (1889) 13 Mad. 44.

(4) (1883) 6 All. 75.

(5) (1889) 11 All. 456.

delivered up and cancelled. That was his prayer upon which the parties went to trial.

To such a case, we think, article 91 of the Limitation Act, schedule II, applies. This is not a document which is said on the face of it to be void; it can only be adjudged void if the facts which the plaintiff asserts can be proved.

For these reasons we think that the Subordinate Judge should have dismissed the claim with costs, and we accordingly now do so.

In giving our decision on this point, we, of course, must not be taken as expressing any opinion on the other points which were decided by the Subordinate Judge, nor as to the question how far the plaintiff can raise the pleas which he did in this case in a suit brought on the bond.

Decree reversed.

APPELLATE CIVIL.

*Before the Hon'ble Mr. E. T. Candy, C.S.I., Acting Chief Justice,
and Mr. Justice Chandavarkar.*

BEHRAM KAIKHUSHRU IRANI (ORIGINAL DEFENDANT), APPLICANT,
v. ARDESHIR KAVASJI (ORIGINAL PLAINTIFF), OPPONENT.*

1903.

July 7.

Small Cause Court—Presidency Small Cause Courts Act (XV of 1882), sections 9 and 38—Decision by a single Judge on evidence—Reversal of decree by Full Court—Jurisdiction—Practice.

One of the Judges of the Presidency Small Cause Court at Bombay having dismissed the plaintiff's suit on the evidence, the decree of the Judge was reversed by the Full Court (composed of two Judges) as being manifestly against the weight of the evidence, on an application by the plaintiff under section 38 of the Presidency Small Cause Courts Act (XV of 1882).

A question arose as to whether the decision of the Full Court was *ultra vires* and void, there being nothing in the rules framed under section 9 of the Act providing for the exercise by the Full Court composed of two or more Judges of any powers conferred on the Small Cause Court.

Held, that though the Rules of procedure and practice of the Presidency Small Cause Court at Bombay were silent as to the exercise by the Full Court consisting of more than one Judge of any powers under the Act, it did not

* Application No. 77 of 1903 under Extraordinary jurisdiction.